

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 908

OFFERED BY M. Waxman

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Chemical Facility Anti-
3 Terrorism Act of 2011”.

4 SEC. 2. FINDINGS AND PURPOSE.

5 (a) FINDINGS.—Congress makes the following find-
6 ings:

7 (1) The Nation’s chemical sector represents a
8 target that terrorists could exploit to cause con-
9 sequences, including death, injury, or serious adverse
10 effects to human health, the environment, critical in-
11 frastructure, public health, homeland security, na-
12 tional security, and the national economy.

13 (2) Chemical facilities that pose such potential
14 consequences and that are vulnerable to terrorist at-
15 tacks must be protected.

16 (3) The Secretary of Homeland Security issued
17 interim final regulations called the Chemical Facility

1 “(2) The term ‘chemical facility security per-
2 formance standards’ means risk-based standards es-
3 tablished by the Secretary to ensure or enhance the
4 security of a chemical facility against a chemical fa-
5 cility terrorist incident that are designed to address
6 the following:

7 “(A) Restricting the area perimeter.

8 “(B) Securing site assets.

9 “(C) Screening and controlling access to
10 the facility and to restricted areas within the
11 facility by screening or inspecting individuals
12 and vehicles as they enter, including—

13 “(i) measures to deter the unauthor-
14 ized introduction of dangerous substances
15 and devices that may facilitate a chemical
16 facility terrorist incident or actions having
17 serious negative consequences for the pop-
18 ulation surrounding the chemical facility;
19 and

20 “(ii) measures implementing a regu-
21 larly updated identification system that
22 checks the identification of chemical facil-
23 ity personnel and other persons seeking ac-
24 cess to the chemical facility and that dis-

1 “(iv) delay a chemical facility terrorist
2 incident for a sufficient period of time so
3 as to allow appropriate response through
4 on-site security response, barriers and bar-
5 ricades, hardened targets, and well-coordi-
6 nated response planning.

7 “(E) Securing and monitoring the ship-
8 ping, receipt, and storage of a substance of con-
9 cern for the chemical facility.

10 “(F) Detering theft or diversion of a sub-
11 stance of concern.

12 “(G) Detering insider sabotage.

13 “(H) Detering cyber sabotage, including
14 by preventing unauthorized onsite or remote ac-
15 cess to critical process controls, including super-
16 visory control and data acquisition systems, dis-
17 tributed control systems, process control sys-
18 tems, industrial control systems, critical busi-
19 ness systems, and other sensitive computerized
20 systems.

21 “(I) Developing and exercising an internal
22 emergency plan for owners, operators, and cov-
23 ered individuals of a covered chemical facility
24 for responding to chemical facility terrorist inci-

25 dents at the facility, including the provision of

1 including participation by local law enforce-
2 ment, and local emergency response providers,
3 and appropriate supervisory and non-super-
4 visory facility employees and their employee
5 representatives, if any.

6 “(L) Performing personnel surety for indi-
7 viduals with access to restricted areas or critical
8 assets by conducting appropriate background
9 checks and ensuring appropriate credentials for
10 unescorted visitors and chemical facility per-
11 sonnel, including permanent and part-time per-
12 sonnel, temporary personnel, and contract per-
13 sonnel, including—

14 “(i) measures designed to verify and
15 validate identity;

16 “(ii) measures designed to check
17 criminal history;

18 “(iii) measures designed to verify and
19 validate legal authorization to work; and

20 “(iv) measures designed to identify
21 people with terrorist ties.

22 “(M) Escalating the level of protective
23 measures for periods of elevated threat.

1 collective response to a chemical facility
2 terrorist incident.

3 “(R) Maintaining appropriate records re-
4 lating to the security of the facility, including a
5 copy of the most recent security vulnerability
6 assessment and site security plan, at the chem-
7 ical facility.

8 “(S) Assessing and, as appropriate, uti-
9 lizing methods to reduce the consequences of a
10 terrorist attack.

11 “(T) Methods to recover or mitigate the
12 release of a substance of concern in the event
13 of a chemical facility terrorist incident.

14 “(U) Any additional security performance
15 standards the Secretary may specify.

16 “(3) The term ‘chemical facility terrorist inci-
17 dent’ means any act or attempted act of terrorism
18 or terrorist activity committed at, near, or against a
19 chemical facility, including—

20 “(A) the release of a substance of concern
21 from a chemical facility;

22 “(B) the theft, misappropriation, or misuse
23 of a substance of concern from a chemical facil-
24 ity; or

1 “(B) any other surface water, ground
2 water, drinking water supply, land surface or
3 subsurface strata, or ambient air within the
4 United States or under the jurisdiction of the
5 United States.

6 “(8) The term ‘owner or operator’ with respect
7 to a facility means any of the following:

8 “(A) The person who owns the facility.

9 “(B) The person who has responsibility for
10 daily operation of the facility.

11 “(C) The person who leases the facility.

12 “(9) The term ‘person’ means an individual,
13 trust, firm, joint stock company, corporation (includ-
14 ing a government corporation), partnership, associa-
15 tion, State, municipality, commission, political sub-
16 division of a State, or any interstate body and shall
17 include each department, agency, and instrumen-
18 tality of the United States.

19 “(10) The term ‘release’ means any spilling,
20 leaking, pumping, pouring, emitting, emptying, dis-
21 charging, injecting, escaping, leaching, dumping, or
22 disposing into the environment (including the aban-
23 donment or discarding of barrels, containers, and
24 other closed receptacles containing any hazardous
25 substance or pollutant or contaminant).

1 non-profit research institute or teaching hospital
2 that has a formal affiliation with an institution of
3 higher education, including photo laboratories, art
4 studios, field laboratories, research farms, chemical
5 stockrooms, and preparatory laboratories, where rel-
6 atively small quantities of chemicals and other sub-
7 stances, as determined by the Secretary, are used on
8 a non-production basis for teaching, research, or di-
9 agnostic purposes, and are stored and used in con-
10 tainers that are typically manipulated by one person.

11 “(b) RISK-BASED DESIGNATION AND RANKING OF
12 CHEMICAL FACILITIES.—

13 “(1) SUBSTANCES OF CONCERN.—

14 “(A) DESIGNATION BY THE SECRETARY.—
15 The Secretary may designate any chemical sub-
16 stance as a substance of concern and establish
17 the threshold quantity for each such substance
18 of concern.

19 “(B) MATTERS FOR CONSIDERATION.—In
20 designating a chemical substance or estab-
21 lishing or adjusting the threshold quantity for
22 a chemical substance under subparagraph (A),
23 the Secretary shall consider the potential extent
24 of death, injury, and serious adverse effects to

25 human health, the environment, critical infra-

1 mation with respect to the quantities of sub-
2 stances of concern that an owner or operator of
3 a chemical facility possesses or plans to possess
4 in order to determine whether to designate a
5 chemical facility as a covered chemical facility
6 for purposes of this section.

7 “(3) ASSIGNMENT OF CHEMICAL FACILITIES TO
8 RISK-BASED TIERS.—

9 “(A) ASSIGNMENT.—The Secretary shall
10 assign each covered chemical facility to one of
11 four risk-based tiers established by the Sec-
12 retary, with tier one representing the highest
13 degree of risk and tier four the lowest degree
14 of risk.

15 “(B) PROVISION OF INFORMATION.—The
16 Secretary may request, and the owner or oper-
17 ator of a covered chemical facility shall provide,
18 any additional information beyond any informa-
19 tion required to be submitted under paragraph
20 (2)(B) that may be necessary for the Secretary
21 to assign the chemical facility to the appro-
22 priate tier under subparagraph (A).

23 “(C) NOTIFICATION.—Not later than 60
24 days after the date on which the Secretary de-

25 termines that a chemical facility is a covered

1 “(i) the designation of a chemical sub-
2 stance as a substance of concern and the
3 threshold quantity for the substance under
4 paragraph (1)(A); and

5 “(ii) the criteria under paragraph
6 (2)(A); and

7 “(B) may, at any time, determine whether
8 a chemical facility is a covered chemical facility
9 or change the tier to which such a facility is as-
10 signed under paragraph (3)(A).

11 “(5) PROVISION OF THREAT-RELATED INFOR-
12 MATION.—In order to effectively assess the
13 vulnerabilities to a covered chemical facility, the Sec-
14 retary shall provide to the owner, operator, or secu-
15 rity officer of a covered chemical facility threat in-
16 formation regarding probable threats to the facility
17 and methods that could be used in a chemical facil-
18 ity terrorist incident.

19 “(c) SECURITY VULNERABILITY ASSESSMENTS AND
20 SITE SECURITY PLANS.—

21 “(1) IN GENERAL.—

22 “(A) REQUIREMENT.—The Secretary
23 shall—

24 “(i) establish standards, protocols,
25 and procedures for security vulnerability

1 agent at the covered chemical facility,
2 if any, in developing the security vul-
3 nerability assessment and site security
4 plan required under this section; and

5 “(IV) include, with the submis-
6 sion of a security vulnerability assess-
7 ment and the site security plan of the
8 covered chemical facility under this
9 subsection, a signed statement by the
10 owner or operator of the covered
11 chemical facility that certifies that the
12 submission is provided to the Sec-
13 retary with knowledge of the penalty
14 provisions under subsection (g);
15 “(iii) set deadlines, by tier, for the
16 completion of security vulnerability assess-
17 ments and site security plans;

18 “(iv) upon request, as necessary, and
19 to the extent that resources permit, provide
20 technical assistance to a covered chemical
21 facility conducting a vulnerability assess-
22 ment or site security plan required under
23 this subsection;

24 “(v) establish specific deadlines and
25 requirements for the submission by a cov-